

**MINUTES
PLANNING BOARD
TUESDAY, APRIL 28, 2015
7:00 PM
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman Steve Lee; Vice-chair: Rob Markiewitz; Members David Pratt, Eric Welsh, and Michael Ham; Alternate members Barbara Dement; Town Attorney Charles Buckley; Youth Voice Benjamin Dodson Sarah Ward; Planning Director Kathi Ingrish, Planner II/Zoning Administrator Mary Jo Gollnitz and Zoning Technician/Deputy Town Clerk Betty Lynd.

ABSENT: Members Gary Turner, Eric Johnson; Alternate David Barley

CALL TO ORDER

Chairman Steve Lee called the meeting to order at 7:00 p.m.

Mr. Lee stated that an alternate member needed to be appointed as a voting member for tonight's meeting. Mr. Pratt made a motion to appoint Ms. Dement as a voting member. Mr. Ham seconded the motion. The vote was unanimous.

APPROVAL OF MINUTES

Ms. Dement requested some corrections to the minutes of March 17, 2015. On page 2, first paragraph, sixth line, Ms. Dement asked for clarification of the phrase "they are two separate issues". She suggested "the cell tower height and the MARA rezoning request are two separate issues". In the third paragraph of the same page, Ms. Dement stated that the word "in" needed to be added in the first sentence to create the phrase "in keeping". On page 3, in the second paragraph, fifth line, change "see a dent to his business" to "anticipate a negative impact". In the fourth paragraph of the same page, in the second line, change "that that" to "that they". On page 4, in the first paragraph, Ms. Dement asked for a comma to be added after "hours" and to change "this is how they are" to "therefore". On page 5, in the first paragraph Ms. Dement asked to change the phrase "board approves this any church" to "board approved this would any church" and to insert an "if" after the comma in the same sentence.

Mr. Eric Welsh made a motion to approve the minutes of March 17 and 24, 2015 as amended. The motion was seconded by Mr. Rob Markiewitz. The vote was unanimous.

MOTION 2015-1 COMPOSITE BICYCLE & PEDESTRIAN PLAN

Ms. Ingrish stated that a public hearing was held earlier in the month without any questions concerning the draft plan. David Nelson prepared the draft document before gaining employment elsewhere, but he did leave notes for changes discussed amongst staff and Transportation Advisory Board members. Ms. Ingrish stated that she highlighted changed text in blue for the board to easily notice. An executive summary was added on pages two and three to indicate that this is an updated plan of the 2006 Bike Plan and various other documents. It also states many of the objectives of the plan including standardizing terminology and conflict resolution between the several different plans. The summary also states how the plan can be evaluated to determine its effectiveness and where further changes could be made.

On page 65, several of the conflicts between the plans were updated. These updates were for further clarification. Page 83 was added to include the Crestdale Heritage Trail, which will create connectivity in the Crestdale Community. This trail is being created as part of the CDBG program. A map will also be added to this page depicting the location of the trail. Page 94 was also updated to include the Crestdale Heritage Trail as a primarily pedestrian facility. Page 104 and on are the recommendations for implementing the plan. On page 104 #1 has been added which states that the plan would need funding for installing the bicycle and pedestrian facilities. These improvements are generally in the right-of-way so it is the Town's responsibility to maintain them. Finally, page 105 was added to depict the concept of bike sharing stations within the Town.

Ms. Dement stated that it was an important catch to recognize the need for funding for the implementation of the plan, but shouldn't there also be a note for a budget to maintain the plan and its improvements. Mr. Buckley

stated that it was an obligation of the Town regardless to maintain such improvements. Ms. Dement asked if the increase in multi-use and bicycle paths would require Chief Hunter to increase bicycle patrols. Mr. Buckley stated it would be a general budget item and increased patrols was not relevant to this discussion.

Ms. Ingrish explained that the Transportation Advisory Committee would be the citizen advisory committee responsible for watching this plan's implementation. Mr. Lee asked if the Transportation Advisory Committee has viewed the new draft. Ms. Ingrish stated that staff has not heard anything specifically from them, although they have been sent a new draft to view. They have been helpful in giving notes based on previous drafts.

Mr. Lee asked if it was a requirement of the Planning Board to make a motion concerning the plan at this meeting. Ms. Dement stated that she believed it would be nice to know what suggestions or thoughts the Transportation Advisory Committee would have concerning the new draft. Mr. Buckley stated that this is not a zoning amendment, so the 30 day limitation does not apply. Extra time is a right of the board. Ms. Ingrish further clarified that the Transportation Advisory Committee will also make their recommendations to the Town Board. They did recommend approval at their March meeting.

Mr. Markiewitz asked if there was any consideration for a bicycle lane on Charles Street from downtown to the Sportsplex property. Ms. Ingrish stated part of the Crestdale Heritage Trail, if implemented, will be a multiuse path on this side of the railroad tracks that would lead to Crestdale Road. That implementation is not guaranteed. Ms. Dement stated that at Monday night's Town Board meeting there was discussion of extra parking on Charles Street so there may not be room for such a lane. Ms. Ingrish stated that the parking discussed would be on the West Charles Street side of Trade Street.

Mr. Lee asked what the timeline looked like after the Planning Board's recommendation of the plan. Ms. Ingrish explained that the Transportation Advisory Committee has completed their recommendation. If a recommendation is given by the Planning Board at tonight's meeting, the plan would go to the Town Board for action at their May 11, 2015 meeting.

Mr. Markiewitz asked what the motion should reflect. Mr. Buckley stated that the Planning Board would be recommending approval or denial. Mr. Markiewitz made a motion to recommend approval of the Composite Bicycle and Pedestrian Plan to the Town Board. Mr. Michael Ham seconded the motion. The motion carried unanimously.

MOTION 2015-2 MICELLANEOUS ELEMENTS IN UDO

Ms. Ingrish stated that as previously done, this is a collection of various items that have been brought to staff's attention since the implementation of the Unified Development Ordinance. One issue brought to staff's attention was message boards within residential communities. These boards are primarily for the residents and are typically located at the entrance to a community or the community center if one exists. There are some changes to add a definition as well as regulations concerning those boards. These signs would be allowed on public or private land. Another issue addressed in these changes are freestanding kiosks within downtown and in the ENT districts. There was a placeholder for 20 square feet for the sign that we have since increased to 24 square feet.

Mr. Ham asked if the intent of the inclusion of neighborhood message boards was to get away from handwritten yard sale signs, etc. Ms. Ingrish explained that was not the intent, but it could serve as a benefit. Mr. Ham asked what these message boards are typically used for. Ms. Ingrish stated they would be good to give information concerning special events or information concerning the HOA in the neighborhood. Mr. Lee stated that many neighborhoods have boxes with plexiglass fronts with messages concerning the neighborhood and this change would regulate those, not necessarily all neighborhood signage. Ms. Ingrish stated that these message boards have previously existed, but there was nothing in the UDO to regulate them in size, etc. Ms. Dement stated that her neighborhood's message board was not lighted, but should it be lighted, what regulations would those follow? Ms. Ingrish stated that if the message boards are within the public right-of-way they would not have lighting.

Mr. Eric Welsh asked for the rationale behind changing the kiosk signs from 20 square feet to 24 square feet. He asked if this was to grandfather in some existing ones. Ms. Ingrish stated that there are none currently

existing and the 24 square feet would give a logical 6 feet x 4 feet regulation. These will be signs that people walk up to, but they need to be large enough to be readable.

Mr. Markiewtiz made a motion to recommend approval of the changes and that they are consistent with policies for development as outlined by the Matthews Land Use Plan, and/or Town's long-range Vision Statements, and/or other adopted policies/plans. Mr. Welsh seconded the motion and the motion carried unanimously.

PUBLIC IMPROVEMENTS VARIANCE- Habitat for Humanity, Dion Drive at Margaret Wallace Road, Waiver of Street Improvements on Margaret Wallace Road Frontage

Ms. Mary Jo Gollnitz explained that Habitat for Humanity is subdividing a tract of land measuring 1.66 acres at the corner of Dion Drive and Margaret Wallace Road. As part of their subdivision requirements, they are required to include public improvements such as sidewalks, curb and gutter. Habitat is asking for a public improvement variance for the improvements on Margaret Wallace Road. The reason for the request is due to DOT's future desire to widen the road. Habitat has committed to the right-of-way at Margaret Wallace Road. The Charlotte DOT has been contacted by staff. They are pleased to see that additional right-of-way will be dedicated because that is the most costly portion of the project. The earliest that a sidewalk would be installed would be 2019 or 2020, provided that there is funding. They did state their comfort with the variance being approved. The other caveat is that Charlotte DOT is not sure which side of Margaret Wallace Road the sidewalk would be installed on. The applicant is asking not to be required to install sidewalks, curb and gutter along the Margaret Wallace Road portion of the subdivision.

Mr. Ham is asking what the hardship is for the applicant. Ms. Gollnitz stated that Habitat for Humanity is not-for-profit. There are plans to install the public improvements on the Dion Drive side of the project. She stated that the board may ask the applicant for further clarification of the financial hardship. Mr. Ham asked if financial cost was a qualification for hardship. Ms. Gollnitz stated that for public improvements, yes it is. Mr. Buckley stated that a further hardship is the scheduled DOT widening. The hardship would stem from using funds to install a sidewalk that will be demolished in the future because of the DOT project.

Mr. Markiewitz asked if there was a grocery store within walking distance of the site. Ms. Gollnitz stated there was one at the corner of Margaret Wallace Road and Idlewild Road. Mr. Markiewitz stated that his reasoning for the question would be whether or not residents would be doing a lot of walking and whether it would be a detriment to make them wait a possible 8-10 years for walkability in the area. Ms. Gollnitz stated that there are multiple properties without sidewalks between this current site and the nearest store. Ms. Dement asked if the ones that do have sidewalks were a result of it being a requirement during their approval process. Ms. Gollnitz stated that was correct. Mr. Lee stated that there are other properties that do not have sidewalks in the area. Ms. Gollnitz stated sidewalks are not consistent in the area and this is why Charlotte is looking at connectivity into the area. They have up to Marshbrooke Road proposed. The earliest funding for the next leg moving north would be 2020. There is no guarantee that the sidewalk would make it to Dion Drive. That right-of-way is shared jurisdiction between Matthews and Charlotte.

Ms. Dement asked if staff had any idea of what the residents would want. Ms. Gollnitz stated that staff had not received any input. Mr. Lee asked if bus lines run in that area. Ms. Gollnitz stated there are no stops in the area. Mr. Markiewitz asked if the request is a delay of installing the sidewalks or to get DOT to pick up the funding of the public improvements. Ms. Gollnitz stated that the request is to not be required to install it at all. Mr. Markiewitz asked who would then provide funding for the sidewalk in the future. Ms. Gollnitz stated that DOT and City of Charlotte would be responsible for funds. As stated before Charlotte DOT is very pleased with the applicant's dedication of the right-of-way because that is the most costly portion. Mr. Markiewitz asked if there was a chance that DOT would come back in the future and demand the funding. Ms. Gollnitz stated there was not. Mr. Lee asked if it was a requirement to dedicate the right-of-way or a concession on the applicant's part. Ms. Gollnitz stated that they would have to dedicate it even if they were going to install the curb and gutter.

Ms. Wanda Fuller, with Fuller Consulting Services, the civil engineer of the project came forward to speak. She stated that even if the sidewalk was installed now, the project would never meet the grade and elevations when DOT comes along for the widening. The sidewalk would be demolished because the elevations would not match. Ms. Dement asked where the public school bus stops are. Ms. Gollnitz stated that staff could not confirm their locations. Mr. Ham asked if the driveways for the houses would be on Dion Drive or Margaret

Wallace Road. Ms. Gollnitz stated the driveways would access Dion Drive. Two lots will have a combined driveway. Mr. Ham asked if it was possible to include landscaping if the sidewalk was not required. Ms. Fuller stated that their intent is not to disturb the heavily wooded 45 foot setback. Mr. Lee asked if they were indicating that they would maintain vegetation except the building envelope and driveway. Ms. Fuller referred to the aerial photographs of the site and stated that the woods would not be disturbed. Mr. Ham asked if the applicant had an idea of the percentage of trees that will come down for the building envelope. Ms. Fuller stated she did not have an exact number, but the building envelopes were limited by setbacks. The combined driveway for two of the lots would minimize clearing.

Mr. Lee stated that he appreciated the notion of saving trees. The sidewalk could be torn out, but there were a lot of ifs. Mr. Markiewitz agreed it would be a poor use of funds to build a sidewalk that will eventually be demolished. If there were facilities in use along the road, Mr. Markiewitz stated he would have a different viewpoint. Mr. Pratt stated it would also make a difference if this section was the only section missing a sidewalk. Mr. Lee asked if the Dion Drive sidewalk will connect. Ms. Gollnitz stated that side will connect to an already existing sidewalk. Mr. Welsh stated he would feel differently about the need for sidewalks if the driveways for the homes were accessed via Margaret Wallace.

Mr. Welsh made a motion to approve the public improvement variance and that it was consistent with the policies for development as outlined by Matthews Land Use Plan, and/or Town's long-range Vision Statements, and/or other adopted policies/plans. Mr. Pratt seconded the motion. The motion was approved with a vote of 5-1, with Ms. Dement in opposition.

ADMINISTRATIVE AMENDMENT-McEwen-Moore House Occupancy Delay

Ms. Ingrish passed out a letter that was received by staff from the applicant. Ms. Ingrish explained that the Town Board was very involved in seeing that this house was preserved. The zoning conditions reflect this as well. They did allow the house to be picked up and moved to another location on the site. The idea was to place the house in the office-zoned portion and for it to be used by a business that related to the senior living facility. The house has been moved and it still meets all required conditions. There are no immediate plans for future development activities. There is no occupant in this historic house. Therefore, the county cannot give the Certificate of Occupancy. The owners are now requesting a 2 year extension to locate an occupant. The Town Board has been monitoring the issue and knows that it is in the process of trying to be resolved. Town Board had heard about changing the Certificate of Occupancy to a Certificate of Completion, so the applicant's request is slightly different than what the Town Board was discussing.

Mr. Phillip Hobbs, 2916 Savannah Hills Drive, Matthews, came forward representing Liberty as the petitioner. Mr. Ham asked why Mr. Hobbs believed they have been unable to find an occupant. Mr. Hobbs stated that he was not sure he could speak to that on Liberty's behalf. He stated that the initial three year period Liberty was given began at securing the building permit. From that point Liberty was more focused on building the nursing facility. During the final year the focus was placed on obtaining an occupant. The last two years were dedicated to upfitting the house. Liberty believed they would be able to obtain a Certificate of Occupancy at the end of the improvements. What resulted was a Certificate of Completion because there was not a change in occupancy during the process. The applicant is trying to find a way to meet that condition as the deadline approaches. They would still like to find an applicant and not circumvent the requirement. If an occupant cannot be found immediately, Liberty is looking at turning it into a meeting room until an occupant can be obtained. Mr. Ham asked if the ideal occupant would be a business. Mr. Hobbs stated that the ideal tenant would be a companion business to the nursing facility. Mr. Ham asked if the building was in the shape to be occupied right now. Mr. Hobbs answered yes. Liberty believed they would have an occupant by now. Mr. Ham asked if the building could be occupied as a residence. Mr. Hobbs stated that while it could be a residence, that would not be the change in use required to obtain a Certificate of Occupancy, and therefore the zoning requirement would still be left unmet. Mr. Ham asked why Liberty anticipated it taking 2 years to find an occupant if it is fit for occupancy currently. Mr. Hobbs stated that the 2 years was just to establish a target to meet.

Mr. Lee stated that he was confused because a Certificate of Occupancy was normally obtained after all permits were completed and was not necessarily contingent upon having an occupant. Mr. Hobbs stated that was Liberty's perception as well. Mecklenburg County Code Enforcement said Liberty could only obtain a Certificate of Completion. To obtain a Certificate of Occupancy, there would need to be a specific tenant for an upfit. Mr.

Lee asked if more work would need to be done because a business use would have different standards than a residential use. Mr. Hobbs stated that was correct. An upfit would be done to meet tenant's business needs.

Mr. Pratt asked if the board room could be created now in order to obtain the Certificate of Occupancy. Mr. Hobbs stated that an active tenant would be Liberty's first choice. That is why they are asking for the extended time frame. However, if a tenant cannot be found, Liberty would pull permits to create a meeting room and obtain the Certificate of Occupancy. Mr. Welsh asked what the negative impact would be if Liberty just went with the meeting room concept. Mr. Hobb explained that upfitting the building for a temporary use would be spending money twice, but Liberty was willing to do it in order to meet the zoning condition. At this point, they just wanted to ask for the time extension.

Mr. Welsh asked what would happen if the Administrative Amendment was not granted. Mr. Hobbs stated Liberty would not be in compliance with the zoning conditions. Mr. Lee asked if there were future phases of development planned. Mr. Hobbs said there were. Mr. Lee stated a consequence would be that future phases would not be built. Mr. Hobbs stated that future phases would need to be brought to the board for approval.

Ms. Dement asked for information on future phases. Mr. Hobbs explained future phases are not set in stone, but they would like to develop independent or assisted living. Ms. Dement stated that the house could be a great central facility, etc. for independent living.

Mr. Markiewitz asked if there was any intent to sell. Mr. Hobbs said there was not. The land had been subdivided to place the house on its own property, but Liberty has no intent to sell. Mr. Markiewitz asked Ms. Ingrish if it could be sold in the future with the conditions placed upon it. Ms. Ingrish stated that ownership would not have impact on zoning conditions. Mr. Markiewitz stated that a two year time extension would make the property more appealing to sell. Mr. Hobbs stated that the preservation agreement and zoning conditions run with the land.

Mr. Ham stated he was uncomfortable with the two years. He asked if the applicant would be comfortable with one year instead. Mr. Hobbs answered that it would be difficult to answer for Liberty, but one year would certainly be greater than no extension.

Ms. Dement asked how the Planning Board could be sure that there would not be future decline to the property if it is not occupied for a while. Mr. Hobbs stated that the two years would involve finding a tenant, creating plans to upfit the property, and then obtain the Certificate of Occupancy. It would be difficult to complete this process within a year. The tenant could be found at the beginning of the two year period and it could still take all two years to obtain the Certificate of Occupancy. The facility has to be maintained because of the preservation agreement, which Liberty is committed to.

Mr. Ham asked if the building is in the shape needed to be occupied, what other construction would need to be completed. Mr. Hobbs stated that a change in use must occur in order to obtain a Certificate of Occupancy. Therefore the bathrooms, accesses, etc. would need to be upfitted to something other than residential requirements. The applicant cannot obtain a Certificate of Occupancy by using the house as a residence. Mr. Lee stated that a certain tenant's requirements could require a different floorplan than if they upgraded it commercially to a meeting room. Mr. Ham asked if it was turned into a meeting room, what would be the problem with obtaining a tenant after the Certificate of Occupancy was obtained for the meeting room. Mr. Hobbs stated that was possible.

Ms. Dement stated that any changes take longer when historical preservation is involved. Mr. Hobbs stated that all changes that have been made up until the present time took into account the historical guidelines.

Mr. Welsh asked if Liberty has been actively looking for a tenant. Mr. Hobbs stated he was not certain. Mr. Welsh stated he has not heard anything that indicated Liberty has been actively pursuing a tenant.

Mr. Lee asked if he was correct in hearing that the Town Board has had feedback concerning this matter. Ms. Ingrish stated that the comments have been informal. This Administrative Amendment is similar to the recent Eden Hall decision, where the Planning Board has the option to take action or send it to the Town Board for final action.

Mr. Lee stated that he was comfortable with the applicant's ability to do the right thing, but the Planning Board does not know the content of the Town Board's feedback and he personally could see why it should be referred to the Town Board for final action. Mr. Ham stated he has issues with it because it was a condition when the plans were approved, and this seemed to be a problem that was set aside by the applicant and not solved in a timely manner. Mr. Welsh stated that his problem was the excessiveness of the two year timeframe. He felt as though he had not heard any evidence presented that showed that Liberty has actively been pursuing a tenant. They could obtain a Certificate of Occupancy by turning the house into a meeting room and then concern themselves with finding a business tenant.

Mr. Lee stated he believed they were already beyond their original time frame. Ms. Ingrish stated the applicant brought it to staff's attention. Mr. Markiewitz stated that the Planning Board is receiving this request very late in the timeframe. Mr. Lee asked what the alternatives would be. Mr. Buckley stated it would still be an Administrative Amendment to Town Board.

Mr. Welsh asked if he heard correctly that there are additional conditions being presented by the applicant. He stated that his impression was that the Town Board had expressed some concerns and the applicant had presented further conditions to meet those concerns. After reviewing the original case's zoning notes, it was determined that additional conditions may have been discussed, but none have been formally presented.

Ms. Dement asked if the applicant had brought this matter to staff's attention, what does staff have in place as a reminder that these deadlines will be approaching, so as not to miss a case like this in the future. Ms. Ingrish stated that many items were scheduled within this time frame. The Town of Matthews does not issue building permits, and therefore staff is not aware of when those permits are pulled and completed. There is no obvious operating procedure in these cases. Mr. Ham stated it was the obligation of the developer to make sure the time frames are met. Ms. Dement stated that a gap-analysis was created for the Bicycle and Pedestrian Plan and she wondered if there was a gap that other things were falling through.

Mr. Lee stated that it sounds like the Town Board wants an opportunity to discuss this. Mr. Ham asked if the Planning Board could refer it to the Town Board with recommendations. Mr. Buckley stated that it can be sent to the Town Board and comments and recommendations are being made freely into the minutes of this meeting.

Mr. Welsh stated he would want to hear about what the plans are for moving forward with this, so the applicant is not in this situation again if the time frame is extended. He was struck by the lack of planning on the applicant's part. This building has remained unoccupied for 2 years and Mr. Welsh was not fully comfortable that the integrity of the building was being maintained. He stated he would be fine with referring it to the Town Board.

Mr. Ham stated the applicant had a way to obtain the Certificate of Occupancy quickly by turning it into a meeting room. That would take significantly less than two years. Mr. Lee agreed with Mr. Welsh's comments.

Mr. Ham stated that extending the time frame would give an opportunity to other businesses that want to forgo conditions until the last minute, so the board needs to take the opportunity to take a stand on enforcing conditions. Once you excuse some individuals, others will want the same treatment.

Mr. Welsh made a motion that this matter be referred to the Town Board for final action. Mr. Ham seconded the motion. The motion carried unanimously.

Mr. Buckley stated this matter would be presented at the first Town Board meeting in May.

RESCHEDULE MAY MEETING DATE

Ms. Ingrish proposed the Tuesday after, June 2, 2015 being the safest date to move the meeting. Mr. Ham asked if there was a meeting at all in May. Ms. Ingrish stated there would not be. The Board consensus was to move the meeting to June 2, 2015.

Mr. Pratt made a motion to move the May Planning Board meeting to June 2, 2015. Mr. Ham seconded the motion. The motion carried unanimously.

ADJOURNMENT

Mr. Markiewitz made a motion to adjourn the meeting at 8:30 p.m. Mr. Welsh seconded the motion and it carried unanimously.

Respectfully submitted,



Betty Lynd
Zoning Technician/ Deputy Town Clerk